

Case No. **87-1237**

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

William R. Yee, Appellant

v.

B. Ward Smith, et al, Appellees;

ON APPEAL FROM:

THE UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

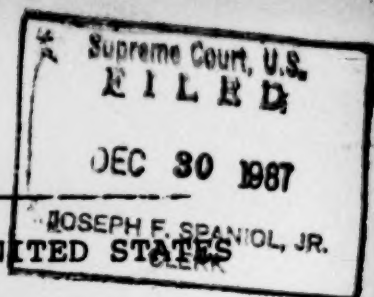
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Table of Contents on pages 7-8

PAGE 1



142 PW

The Questions Presented per Rule 21.1(a)

1. Did the Court of Appeals for the 6th Circuit render a decision in conflict with the decision of another federal court of appeals on the same matter? Did the court of appeals render a decision based upon a statement of facts that are not found within the Amended Complaint.

2. Have the court of appeals and district court below so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of Supreme Court supervision? Have the courts below failed in their established duties to:

i apply liberal construction of the Amended Complaint in favor of the plaintiff appellant;

ii view all the allegations in the Amended Complaint as true in the light

most favorable to the plaintiff appellant;

iii take the Amended Complaint and all fair inferences as true;

iv. consider the plaintiff appellant's material as pertinent to the motion to dismiss;

v. avoid unreasonable and capricious conduct in dismissing the case, denying injunctive relief and reassigning the case to another judge;

vi. to base a motion to dismiss upon the face of the Amended Complaint?

3. Did the court below abuse its discretion by dismissing civil actions for procedural errors without a showing of intentional delay, contumaciousness, grossly negligent behavior or nonfeasance where as in the present case the plaintiff appellant has made strenuous efforts to comply with

procedural requirements?

4. Did the Court of Appeals below deny the precedent supporting leniency in the face of procedural errors where no one was misled and plaintiff appellant did substantially comply with all of the necessary procedural details?

5. Has the court of appeals so far sanctioned the district court's departure from the accepted and usual course of judicial proceedings as to call for the Supreme Court to exercise it's power of supervision? Is it accepted and usual for the district court to deny the plaintiff appellant the privilege of explaining the operation of the medical staff by-laws so the district court judge may rely upon information from the district court judge's uncle and son and other

sources of a personal nature and not related to or otherwise appropriate and adequate for the case at hand and its facts and circumstances?

6. Has the federal bench decided an important question of federal law which has not been settled by the Supreme Court but ought to be? Is the physician ordering oxygen as an aid and device for a handicapped patient in a hospital the agent of the patient and alleging injury in that agency entitled to standing, under the Rehabilitation Act of 1974, 29 U.S.C. § 794? The courts below say no and the plaintiff appellant says yes.

List of the parties

per Rule 21.1(b).

William R. Yee, Plaintiff/Appellant

v.

B. Ward Smith,	John J. Freysinger,
V. Khanna,	H. R. Holloway,
M. Coto	M. Patel
R. A. Wyatt	D. Sukurmarin
J. Padgett	S. Rhew
Mary Pollando	F. Taylor
H. Schunk	D. Mahajan
F. McCue	R. Malone
Walter S. Wheeler	Maria McPhail
Jose O. Kleer	G. Stair
B. Sinha	J. A. Foote
K. Sawney	H. Quiroz
S. Kobolijak	C.J. Everingham
A. Bady,	Associated Physicians,
Cozadd, Shangle, Smith & Andrews	
Peoples Community Hospital Authority	
Defendant/Appellees.	

Table of Contents per rule 15.1(c)	
Caption.....	p. 1
The Questions Presented.....	p. 2-5
List of the parties.....	p. 6
Table of Contents.....	p. 7-8
Table of Authorities.....	p. 9-12
Reference to reports below.....	p. 12
Statement of Grounds juris.....	p.13-14
Constitutional provisions statutes and ordinances, regulations, citations.....	p. 15-17
verbatim full text in appendix,	p. 86-131
Concise Statement of the case. ...	p.18-29
Basis of Federal Jurisdiction.	p.29-31
Argument in support of writ....	p.31-63
Appendix: Contents.....	p.64-65
Order directing proper appendix	66
Letter demanding Joint Appendix by July 20, 1987	67
Order Denying list of errors and extension to file petition for rehearing	68
Order denying reassignment	69

Order denying injunction.....	70-71
Order dismissing case/opinion	72-74
Order affirming district court with opinion [order appealed from]	75-80
Order denying petition rehearing	81-82
Notice of Appeal	83-85
Federal Law.....	86-103
State Statutes (M.C.L>).....	104-131
Compliance Agreement.....	132-140
Signature and Proof of service	141-142

Table of Authorities per Rule 21.1 (c)

Page 31:

California Sate Council of Carpenters
v. Associated General Contractors of
California, Inc., 648 F.2d 527,
(C.A.Cal. 1980), certiorari granted 102
S.Ct. 998.

Page 35:

Dann v. Studebaker-Packard Corp., 288
F.2d 201, (C.A.Mich. 1961); Jenkins v.
McKeithen, 89 S.Ct. 1843, 395 U.S. 411,
23 L.Ed.2d 404, (1969), rehearing
denied 90 S.Ct. 35, 396 U.S. 869, 24
L.Ed.2d 123.

Page 37:

Hahn v. Woodmen Acc. & Life Co., 474
F.2d 1237 (C.A.Ohio 1973).

Page 36

Joplin v. Southwestern Bell Tel. Co.,
671 F.2d 1274 (C.A.Ok1. 1982).

Page 33:

Harrison v. Equitable Life Assur. Soc. of U. S., 435 F. Supp. 281, (D.C. Mich. 1977).

Pages 41 and 42

Milford v. People's Community Hospital Authority, 380 Mich 49, 57 (1968).

Page 34:

Nabke v. U. S. Dept. of Housing and Urban Development, 520 F. Supp. 5 (D.C.Mich. 1981).

Page 42:

Napuche v. Liquor Control Commission, 336 Mich 398, 403, 404, (1953).

Page 34

Sims v. Mercy Hospital of Monroe, (C.A.Mich. 1971), 451 F.2d 171.

Page 33:

Smart v. Ellis Trucking Co., Inc., 580
F.2d 215, (C. A. Mich. 1978),
certiorari denied 99 S.Ct. 1497, 440
U.S. 958, 59 L.Ed.2d 770.

Page 35:

Westlake v. Lucas, 537 F.2d 857
(C.A.Mich. 1976).

PAGE 49:

Federal Rules of Civil-Appellate
Procedure, as Amended to May 1, 1987,
(West Publishing Co. 1987-1988
Educational Edition), (Notes of the
Advisory Committee on Appellate Rules),
Rule 27, Rules of Appellate Procedure,
page 279, 1987.

Restatement of the Law, 2d, Agency
2nd, American Law Institute, Vol. 2, p.
164 (May 23, 1957).

§ 374. Actions of Tort by Agents
against Third Persons

(1) The fact that an act, otherwise a tort upon an agent, is committed by another while the agent is conducting the affairs of the principal, or because of the agency relation, does not prevent the agent from maintaining an action against the other on his own account.

(2) A servant or other agent has no action of tort because another has tortiously harmed the principal or destroyed his business, unless the other acted for the purpose of harming the agent's interests.

(3) A servant or other agent has a cause of action against one who, without privilege, purposely causes the principal not to perform his contract of employment or not to continue the employment.

Reports below per Rule 21.1 (d) NONE

Statement of Grounds of Jurisdiction
per Rule 21.1(e)

The United States Court of Appeals for the 6th Circuit did affirm the actions of the United States District on August 28th, 1987 and did enter their affirmation onto the record on August 28th, 1987, appendix pages 75-80 below.

On October 15, 1987 the United States Court of Appeals for the 6th Circuit did deny plaintiff appellant's petition for rehearing and did enter that denial into the record, appendix page 81-82 below.

28 U.S.C. § 1254(1) gives the United States Supreme Court the jurisdiction to ISSUE WRITS OF CERTIORARI UPON PETITIONS from United States Courts of Appeals before or after rendition of decree. Affirmation

of the United States District Court
Action is sufficient to support
certiorari on jurisdictional grounds.

RULE 21.1 (f) Law involved in the case:

FEDERAL LAW

U. S. Constitutional Amendments:

1	APPENDIX PAGE 86
5	APPENDIX PAGE 86-87
14	APPENDIX PAGE 87-88

Federal Statutes:

15 U.S.C. § 1	APPENDIX PAGE 88-90
15 U.S.C. § 2	APPENDIX PAGE 90
15 U.S.C. § 15	APPENDIX PAGE 91
18 U.S.C. § 371	APPENDIX PAGE 91-93
18 U.S.C. § 241	APPENDIX PAGE 93-94
18 U.S.C. § 242	APPENDIX PAGE 94-95
28 U.S.C. § 1254(1)	APPENDIX PAGE 95
28 U.S.C. § 1291	APPENDIX PAGE 96
28 U.S.C. § 1331	APPENDIX PAGE 96
28 U.S.C. § 1337	APPENDIX p. 96-97
28 U.S.C. § 1343	APPENDIX p. 97-99
28 U.S.C. § 1654	APPENDIX p. 99
28 U.S.C. § 2101(c)	APPENDIX p. 99-100
28 U.S.C. § 2103	APPENDIX p. 100-101

28 U.S.C. § 2111 APPENDIX p. 101

29 U.S.C. § 794 APPENDIX p. 101-102

29 U.S.C. § 794(a) APPENDIX p. 103

Michigan Statutes

M.C.L. § 24.232 APPENDIX p. 104-106

M.C.L. § 24.233 APPENDIX p. 106-107

M.C.L. § 24.285 APPENDIX p. 107-108

M.C.L. § 24.306 APPENDIX p. 108-109

M.C.L. § 37.1101 APPENDIX p. 110

M.C.L. § 37.1102 APPENDIX p. 110

M.C.L. § 37.1103 APPENDIX p. 111-114

M.C.L. § 37.1301 APPENDIX p. 114-115

M.C.L. § 37.1302 APPENDIX p. 115-117

M.C.L. § 37.1601 APPENDIX p. 117

M.C.L. § 37.1602 APPENDIX p. 117-118

M.C.L. § 37.1606 APPENDIX p. 118-119

M.C.L. § 37.1607 APPENDIX p. 119

M.C.L. § 330.1136 APPENDIX p. 120

M.C.L. § 330.1142 APPENDIX p. 120-121

M.C.L. § 330.1150 APPENDIX p. 121

M.C.L. § 331.2 APPENDIX p. 121-123

M.C.L. § 331.5 APPENDIX p. 124
M.C.L. § 331.6 APPENDIX p. 125-128
M.C.L. § 331.8t APPENDIX p. 128-129
M.C.L. § 333.20142 APPENDIX p. 129-130
M.C.L. § 333.20152 APPENDIX p. 130-131

Concise Statement: Rule 21.1(g).

The plaintiff appellant filed an Amended Complaint alleging a conspiracy upon the part of the defendant appellees to unlawfully:

- i. attempt to restrain and unlawfully restrain plaintiff's practice of medicine at Heritage Hospital in violation of 15 U.S.C. §§ 1,2 and 15;
- ii. attempt to establish and unlawfully establish a monopoly in the practice of medicine at Heritage Hospital in violation of 15 U.S.C. §§ 1,2 and 15;;
- iii. attempt to defame and unlawfully defame plaintiff's professional reputation by an attempt to manufacture and unlawful manufacture of an unreasonable and unlawful record that plaintiff had violated rules and regulations by ordering oxygen as an aid and device for a handicapped

patient on the Heritage Hospital Mental Health Unit;

iv. attempt to deny and unlawfully deny plaintiff due process in the manufacture of the record that plaintiff violated rules and regulations of Heritage Hospital and 1st, 5th and 14th Amendments to the U. S. Constitution.

v. attempt to cause and unlawfully cause mental and emotional suffering upon the plaintiff for having offered oxygen PRN at the bedside for a handicapped patient in compliance with the plaintiff's fiduciary duties to his patient and patients;

vi. attempt to interfere and unlawfully interfere with plaintiff's professional and contractual relationships with physicians and patients at Heritage Hospital;

vii. attempt to retaliate and unlawfully retaliate against the plaintiff for offering oxygen as an aid and device for a handicapped patient within the scope of The Michigan Handicappers' Civil Rights Act, M.C.L. 37.1101 et seq;

viii. attempt to retaliate and unlawfully retaliate against the plaintiff for plaintiff's order for oxygen as an aid and device for a handicapped patient within the scope of the Rehabilitation Act of 1973, 29 U.S.C. § 794;

ix. deny the plaintiff his constitutionally protected rights in free speech by denying the plaintiff the RIGHT of writing a medical order for oxygen PRN at the bedside at the request of his patient and as THE patient's agent AND fiduciary.

The plaintiff appellant did file numerous interrogatories. The majority of the defendant appellees did not file answers or objections to the interrogatories within 30 days as required by Rule 33(a) of the Federal Rules of Civil Procedure.

The plaintiff filed a motion to compel answers to interrogatories. The District Court did order that each defendant answer twenty interrogatorie with no more than four parts each.

The District Court did order that discovery be held in abeyance until after rulings were made upon defendants' motions for summary judgment and dismissal.

The defendants did deny plaintiff's request for extension of his leave of absence from the medical staff at Heritage Hospital.

Plaintiff appellant did make a motion for reassignment of the case to another judge, injunctive relief after the defendants removed plaintiff appellant from the medical staff of Heritage Hospital and for denial of defendants' motions for summary judgment and dismissal and for summary judgment in favor of the plaintiff appellant.

On March 27, 1987 the district court did entertain oral arguments regarding motions to reassign the case to another judge, an injunctive order for the defendants to extend the plaintiff/appellants leave of absence from the Heritage Hospital Medical Staff until this case and all appeals were exhausted and motions of dismissal and summary judgement.

The District Court Judge did refuse to hear plaintiff/appellant's explanation of the internal operations of the Heritage Hospital Executive Committee and Medical Staff. The District Court Judge did rely upon knowledge obtained from the judge's son and the judge's uncle uncle and other personal acquaintances of the judge.

The District Court judge did attempt to discourage the plaintiff appellant from conducting himself pro se as an attorney

The District Court judge below did discourage the plaintiff appellant from making procedural objections and indicated that there was a presumption of objection with every adverse ruling.

The district court judge did require proof of allegations prior to completion of discovery.

The district court judge did not allow consideration of the possibility that all of the allegations in the Amended Complaint were part of the conspiracy and attempt to establish a monopoly in the practice of medicine at Heritage Hospital.

In an antitrust suit the district court judge below refused to make rulings that would apply federal law to hospitals and affect how hospitals conducted their business.

The district court judge below refused to allow the plaintiff appellant's autonomy within the medical staff to have value because it would result in asserting conflict of interest and unethical conduct sufficient to disbar a defendant attorney.

On March 31st, 1986 the district court did order dismissal of the case in favor of the motions of the defendant appellees, did deny the plaintiff's motion for reassignment, and did deny injunctive relief of the defendants' actions in removing the plaintiff from the medical staff of Heritage Hospital.

The orders were entered onto the docket on April 4th 1986.

Plaintiff did appeal to the U. S. Court of Appeals, 6th Circuit.

Plaintiff did make a diligent effort to submit a proper joint appendix. However, the district court below was accepting dockett entries by the defendants without plaintiff appellant's knowledge and this did make it impossible to file a correct and timely joint appendix.

Plaintiff did submit a timely joint appendix AND a timely corrected joint appendix on Aug, 22, 1987 and received August 23, 1987 by the U. S. Court of Appeals.

The Court of Appeals had required plaintiff appellant to file a corrected Joint Appendix. On July 20, 1987 plaintiff did receive the letter of 7-13-87 stating that the corrected joint appendix was due on July 20, 1987.

Plaintiff appellant, without adequate time did submit a timely motion for a listing of the deficiencies in the joint appendix and a reasonable extension within which to submit a corrected joint appendix.

In case the court should deny such a listing and extension of time the plaintiff appellant made a more than reasonable effort without adequate time

and submitted a timely three volume joint appendix sufficient for the court to make a proper ruling and with all reasonable conveniences provided by a proper joint appendix.

The appellate court below did not offer plaintiff appellant the privilege of a list of deficiencies and additional time to submit a proper joint appendix.

The appellate court below did proceed to make a ruling apparently based upon the corrected joint appendix submitted by the plaintiff appellant.

Plaintiff appellant did submit two petitions for a rehearing en banc.

The court of appeals did stamp as received and return plaintiff appellant's second petition for rehearing based on an opportunity to submit a corrected joint appendix. The

petition was returned with an unsigned handwritten note that it would not be necessary to send a cover letter or further explanation and without official response.

The appellate court did deny the plaintiff appellant's petition for rehearing en banc.

The U. S. Court of Appeals did affirm the District Court's actions of March 27th, 1987 by order of August 28th, 1987 as entered into the Record August 28th, 1987.

The U. S. Court of Appeals did deny the plaintiff appellant's petition for rehearing as ordered October 15th, 1987 and entered into the record October 15th, 1987, page 42 below.

Plaintiff did submit a Notice of Appeal to the defendant appellees and the United States Court of Appeals for

the Sixth Circuit on Monday, November 16 1987 and it was filed November 17, 1987.

Basis of Federal Jurisdiction per Rule 21.1 (i)

Statutes conferring jurisdiction.

The federal questions involved in the antitrust count, the civil rights count, the free speech count and the action under the Rehabilitation Act of 1973 are embraced within the jurisdictional scope of 28 U.S.C. § 1331. 28 U.S.C. § 1331 confers the U. S. District Court with the jurisdictional power to accept complaints based on federal questions.

In addition 28 U.S.C. § 1337 in conjunction with 15 U.S.C. § 15 confers upon the U. S. district court jurisdiction to hear complaints of

antitrust violations put forth by private parties alleging injury due to antitrust violations 15 U.S.C. § 15.

In addition 28 U.S.C. § 1343 confers upon the U. S. District Court jurisdiction to hear complaints in civil cases alleging civil rights violations grounded upon any conspiracy mentioned in 42 U.S.C. § 1985 . This includes the complaint alleging violations of free speech, due process and retaliation under the 1st, 5th, and 14th amendments of the U. S. Constitution and the Rehabilitation Act of 1973, 29 U.S.C. § 794.

28 U.S.C. § 1291 confers upon the U. S. Appellate Courts jurisdiction to review final decisions of the U. S. District Courts. Dismissal, denial of injunctive relief and denial of reassignment in this case constitutes

final decisions sufficient to invoke appeal to the U. S. Court of Appeals.

Argument per Rule 21.1 (j).

Plaintiff appellant asserts that the Court of Appeals for the the 6th Circuit did render a decision in conflict with the decision of another federal court of appeals on the same matter? The federal courts below did violate their duty to remain within the boundaries of the complaint in ruling in favor of the motion to dismiss. Precedent is established in California State Council of Carpenters v. Associated General Contractors of California, Inc., 648 F.2d 527, (C.A.Cal. 1980), certiorari granted 102 S.Ct. 998. A fair reading of the 6th Circuit's opinion of August 28, 1987

and the text of the plaintiff's Amended Complaint will reveal that none of the material facts of the 6th Circuit's opinion of August 28, 1987 are found within the Amended Complaint. In fact, all of the material facts cited by the 6th Circuit are in direct opposition to allegations of fact found within the Amended Complaint.

2. Plaintiff Appellant asserts that 6th Circuit so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of Supreme Court supervision. The 6th Circuit Court of Appeals has failed in its duty to conform to precedents in its own jurisdiction:

i. The 6th Circuit below did fail to apply liberal construction of the Amended Complaint pages 189-230 below in favor of the plaintiff/appellant. A

fair reading of the Amended Complaint will reveal that the allegations of material fact in the Amended Complaint were not given a liberal construction in favor of the Plaintiff Appellant as required by Smart v. Ellis Trucking Co., Inc., 580 F.2d 215, (C. A. Mich. 1978), certiorari denied 99 S.Ct. 1497, 440 U.S. 958, 59 L.Ed.2d 770.

ii. In fact allegations of fact in the Amended Complaint were not given any credibility and facts as alleged by the defendants were given greater weight and credibility. The court failed in its duty to view all the allegations in the Amended Complaint as true in the light most favorable to the plaintiff/appellant as required in Harrison v. Equitable Life Assur. Soc. of U. S., 435 F. Supp. 281, (D.C. Mich. 1977).

iii. A comparison of the allegations found in the Amended Complaint with the opinion of the 6th Circuit on August 28th, 1987 reveals that the Court of Appeals failed its duty to take the Amended Complaint and all inferences as true as required in ruling on a motion to dismiss. Nabke v. U. S. Dept. of Housing and Urban Development, 520 F. Supp. 5 (D.C. Mich. 1981).

iv. The 6th Circuit below did fail in its duty to consider the plaintiff appellant's material's pertinent to the motion to dismiss as required by Sims v. Mercy Hospital of Monroe, (C.A. Mich. 1971), 451 F.2d 171.

v. The 6th Circuit below did not avoid unreasonable and capricious conduct in dismissing the case. The plaintiff asserts that the facts in the Amended Complaint are true, may be proven and

support a cause of action within the scope of Westlake v. Lucas, 537 F.2d 857 (C.A.Mich. 1976).

vi. A comparison of the allegations found in the Amended Complaint with the opinion of the 6th Circuit on August 28th, 1987 reveals that the Court of Appeals failed its duty to base motions to dismiss upon the face of the Amended Complaint. Given the facts alleged in the Amended Complaint it is unreasonable to determine that there is a certainty that no set of facts could be proven at trial entitling the plaintiff to relief. Dann v. Studebaker-Packard Corp., 288 F.2d 201, (C.A.Mich. 1961); Jenkins v. McKeithen, 89 S.Ct. 1843, 395 U.S. 411, 23 L.Ed.2d 404, (1969), rehearing denied 90 S.Ct. 35, 396 U.S. 869, 24 L.Ed.2d 123.

Plaintiff appellant asserts that the 6th Circuit did abuse its discretion by dismissing civil actions for procedural errors without a showing of intentional delay, contumaciousness, grossly negligent behavior or nonfeasance where as in the present case the plaintiff/appellant has made strenuous efforts to comply with procedural requirements. Joplin v. Southwestern Bell Tel. Co., 671 F.2d 1274 (C.A.Okla. 1982). Review of the chronology of events will reveal that the plaintiff appellant was given very short notice of the time for submission of the Joint Appendix and Revised Joint Appendix, short notice of contents and no notice of the nature and extent of the deficiencies. Examination of the Joint Appendix and Revised Joint Appendix will reveal much effort and

substantial compliance under compromising circumstances.

Plaintiff appellant asserts that the the Court of Appeals below did deny plaintiff appellant the privilege of leniency in the face of procedural errors where no one was misled and plaintiff appellant did substantially comply with all of the necessary procedural details. Hahn v. Woodmen Acc. & Life Co., 474 F.2d 1237 (C.A.Ohio 1973). Plaintiff asserts that the Joint Appendix and Revised Joint Appendix were both long, voluminous and did substantially comply with procedural requirements given the circumstances.

Plaintiff appellant asserts that the appellate court below has so far sanctioned the district court's departure from the accepted and usual

course of judicial proceedings as to call for the Supreme Court to exercise it's power of supervision.

The district court denied the plaintiff appellant the privilege of explaining the operation of the medical staff by-laws and the district court judge relied upon information from the district court judge's uncle and son and personal acquaintances.

Further the District Court Judge did object to plaintiff appellant conducting his own case in the manner of an attorney.

And further where the District Court Judge did attempt to shape the plaintiff appellant's arguments.

And further where the District Court Judge did attempt to persuade the plaintiff appellant not to make concurrent records of procedural

objections.

And further where the district court judge did utilize arbitrary and capricious and unreasonable logic and thought in interpreting and construing plaintiff appellant's articulation of allegation law and legal arguments.

And further, where the district court judge did assert that he was familiar with the pleadings and repeatedly demanded allegations of money damages that were already attached to the conclusion of each of the eight counts.

And further where the district court judge made rulings of dismissal based upon plaintiff appellants failure to making proofs of the allegations before the majority of the defendants had answered a single interrogatory.

Plaintiff appellant asserts that the federal bench decided an important question of federal law which has not been settled by the Supreme Court but ought to be. Plaintiff asserts that the Supreme Court has not determined that the physician ordering oxygen for a patient in a hospital is not the agent of the patient or does not have standing within the status of agency under the Rehabilitation Act of 1973, 29 U.S.C. § 794.

Plaintiff asserts that the United States Department of Health and Human Services, Division of Civil Rights is currently giving plaintiff standing to assert rights, privileges and immunities under the rehabilitation Act of 1973, 29 U.S.C. § 794. See the Compliance Agreement below at pp. 132-140.

Plaintiff appellant asserts that federal laws within hospitals are easily subverted within the privileges and immunities of the medical community. Plaintiff asserts that the interests promoted by privileges and immunities of the medical community were never intended to impinge upon or limit any state or federal law or a physician's right to practice medicine in a public hospital in Michigan:

This license to practice medicine includes the practice thereof in public hospitals. Albert v. Gogebic County Public Hospital Board of Trustees, (1954), 341 Mich 344, 357.

Milford v. People's Community Hospital Authority, 380 Mich 49, 57 (1968).

The right to practice medicine in public hospitals in Michigan such as Heritage Hospital is a liberty and property right which may be restricted, limited or denied only after

application of due process under state and federal constitutional law.

Under the Constitution of the United States, Am, § 1 and the Michigan Constitution of 1963, art 1, § 17, no one may be deprived of life, liberty, or property without due process of law. Due process requirements are summarized in various Michigan cases. We first turn our attention to the case of Napuche v. Liquor Control Commission, (1953), 336 Mich 398, wherein it is stated (pp 403,404);

Milford v. People's Community Hospital Authority, 380 Mich 49, pp 57 and 58 (1968). The plaintiff appellant as a physician has a right to practice medicine and write medical orders in Heritage Hospital and other hospitals of the defendant appellee People's Community Hospital Authority. This is a liberty and property interest protected by the First, Fifth and Fourteenth Amendments of the U. S. Constitution.

Plaintiff asserts that the Compliance Agreement in the Appendix attached, pages 132-140 below, is proof that the matters herein alleged are not trivial, the matters herein alleged are not merely matters of the plaintiff appellant's imagination and are of sufficient weight and import as to merit Supreme Court review.

Plaintiff appellant further asserts that the rights of handicapped patients within hospitals surface only upon the written order of the attending physician. If the attending physician fails to record such interests and write medical orders in support of such interest they will remain inchoate and sub judice. Plaintiff asserts that the rights of the handicapped can be and have been denied by the medical community's ability to conceal such

abuse within the privileges and immunities of its medical committees and covert oppression upon the attending physicians.

Finally, the plaintiff asserts that the courts below have conducted themselves so as to deny the plaintiff appellant the privilege of conducting his own case as provided for by law. The conduct of the district court was such as to deny the plaintiff appellant the opportunity and privilege of presenting his own allegations of fact.

The opinion of the appellate court did effectively rewrite the Amended Complaint. Examination of the opinion of the appellate court in the appendix below, pp. 75-80, reveals that the appellate court did base their decision upon a set of facts that cannot be found within the Amended Complaint.

The disparity between the facts as recited by the United States Court of Appeals for the Sixth Circuit and the allegations found within the Amended Complaint is of such enormous magnitude as to require supervision and review by the Supreme Court.

Plaintiff asserts that such an alteration of facts constitutes a course of conduct that cannot be tolerated by the United States Supreme Court within the federal bench.

Plaintiff appellant asserts that the United States District Court below and United States Court of Appeals for the Sixth Circuit did indeed conduct itself in such an arbitrary and unreasonable fashion as to provide the special and important reasons to invoke the United States Supreme Court's power of review by certiorari per Rule 17.

Plaintiff asserts that allegations of fact in the Amended Complaint are sufficient to support a cause of action upon which a claim may be supported.

Plaintiff appellant asserts that the conduct of the courts below was arbitrary, capricious and unreasonable and undermines the the courts' reliance upon principled reasoning to sustain confidence of the public at large in the federal judiciary.

The courts below did improperly make findings of fact which is a function of the jury and only after proper trial procedures.

The courts below did act so as to require the Supreme Court to exercise its power of supervision to protect the integrity and reputation of integrity which the federal court system wishes to foster in the community at large.

Plaintiff appellant asserts that the conduct of the court below so far departs from the accepted and expected course of judicial conduct as to constitute arbitrary and abusive exercise of judicial powers to:

usurp the function of the fact finder (jury) by the bench;

rewrite the Amended Complaint and thereby deprive the plaintiff/appellant the privilege of representing himself;

abandon precedent and principled reasoning so far as to manifest invidious conduct.

Plaintiff appellant asserts that under the circumstances the courts below offer themselves to criticism of unprincipled reasoning that may imply any sort of unprincipled, unseemly and invidious motive and influence to the public.

The courts below have conducted themselves in a fashion to support the folk wisdom that absolute immunity of the bench may corrupt absolutely.

Plaintiff asserts that upon examination of the record the United States Supreme Court must determine that plaintiff appellant is entitled to standing under 29 U.S.C. § 794 as the United States Department of Health and Human Services did in the Compliance Agreement, pages 132-140 below.

Plaintiff appellant asserts that examination of the amended Complaint will reveal a statement sufficient to support an action for conspiracy, conspiracy to attempt and attempt to establish a monopoly in the practice of medicine at Heritage Hospital and to restrain plaintiff appellant's practice of medicine.

Plaintiff asserts that the appellate court below has effectively barred meaningful appeal and does effectively bar the development of case law that effectively distinguishes substantial errors in the appendix from deminimus errors that would allow "relief of the sort which is ordinarily unopposed or which is granted as of course", Federal Rules of Civil-Appellate Procedure, as Amended to May 1, 1987, (West Publishing Co. 1987-1988 Educational Edition), (Notes of the Advisory Committee on Appellate Rules), Rule 27, Rules of Appellate Procedure, page 279, 1987.

Plaintiff asserts that the courts and the opposing attorneys have denied plaintiff appellant professional courtesies customarily afforded to litigants and members of the practicing

bar. Due to the intricacies of the practice of law and the time that microscopic attention to de minimus errors of form would impose upon the bench and the practicing bar there is "relief of the sort which is ordinarily unopposed or which is granted as of course", Federal Rules of Civil-Appellate Procedure, as Amended to May 1, 1987, (West Publishing Co. 1987-1988 Educational Edition), (Notes of the Advisory Committee on Appellate Rules), Rule 27, Rules of Appellate Procedure, page 279, 1987.

Plaintiff appellant asserts that examination of the record below will reveal that the courts below have by their conduct and opinions supported violation of constitutional and federal law by the defendants' course of criminal conspiracy.

Plaintiff asserts that the best way to demonstrate the defects alleged is to set the statement of facts in the opinion of United States Court of Appeals, pages 75-80 below, in direct opposition to the allegations of the Amended Complaint. This will demonstrate that the plaintiff appellant did indeed allege facts sufficient to support a cause of action. It will demonstrate that the courts below did fail to give the allegations in the Amended Complaint reasonable consideration as true. It will demonstrate that the courts below did improperly make determinations of fact in opposition to the allegations in the Amended Complaint. The Appellate Court below did improperly dismiss the case.

Appellate Court Decision of 8-28-
87 in case No. 86-1437:

In July 1981 his patient (#11668563) was admitted to the mental health unit of Heritage Hospital and plaintiff ordered the staff to provide oxygen to her bedside for usage she, the patient, requested. This order violated an admission policy of the mental health unit of Heritage Hospital which did not allow oxygen tanks, hoses and gauges to be left unsupervised in the psychiatric unit for safety reasons.

The Amended Complaint reads as follows:

2. Plaintiff alleges that there was a rule that prohibited acutely ill medical patients from admission to the Mental Health Unit of Heritage Hospital. The rule reads as follows: "Patients who require intravenous therapy, Oxygen therapy, tubes, catheters and related machinery are contraindicated for admission."

3. Plaintiff alleges that the named defendants did conspire to apply a new and unlawful meaning to the rule to prohibit the admission of ambulatory handicapped patients who required oxygen and medical machinery and catheters and i.v. antiseizure medication as aids and devices to maintain comfort convenience and their ambulatory status. These handicapped patients were very often insured by Medicare and Medicaide as

the handicap prohibited employment.

4. The plaintiff admitted a patient who utilized oxygen constantly at home due to medical problems related to chronic obstructive pulmonary disease, asthma and emphysema. The plaintiff did order oxygen P.R.N. at the bedside for the comfort and convenience of the patient.

5. It is published in the medical literature that oxygen improves the mental function and reduces morbidity and mortality (death and suffering). Due to this medical literature and the patient's condition the use of oxygen P.R.N. at the bedside is a proper and reasonable medical order.

6. It was known to the plaintiff that at that time in the the past other patients had been admitted and allowed to use catheters for neurogenic bladders. Also patients were allowed to use room humidifiers, holter monitors, wheelchairs, canes, walkers, transcutaneous nerve stimulators and similar medical machinery as aids and devices on the Mental Health Unit of Heritage Hospital.

7. Plaintiff alleges that under these circumstances the only reasonable application of the rule according to past practice was to prohibit the admission of patients who were acutely ill and only by virtue of the acute illness required the use of oxygen, catheters, i.v., and medical

machinery. Ambulatory handicapped patients who utilized these devices at home without the benefit of medical supervision as provided in a general hospital were properly admitted to the Mental Health Unit of Heritage Hospital.

20. Appellate Court Decision of 8-28-87 in case No. 86-1437:

The nursing staff challenged plaintiff's order, but the plaintiff refused to compromise and was subsequently issued a letter from the hospital's executive committee, stating that he had disregarded department directives and requesting that he observe rules and regulations of the mental health unit in the future.

The Amended Complaint reads as follows:

8. Plaintiff alleges that the Executive Committee of Heritage Hospital, the PCHA Medical Advisory Committee, PCHA legal counsel and the officers and agents knew that the proper application of the rule was to admit and not exclude ambulatory but handicapped patients in need of these aids and devices such as oxygen. The officers and agents of the PCHA in fact had a public duty to make medical services available to the handicapped.

9. Plaintiff alleges that the named defendants did manufacture a new

meaning to the old rule in order to make an official determination in the record of the Executive Committee Minutes that plaintiff, Dr. Yee, did in fact violate rules and regulations by ordering oxygen for the handicapped patient he did admit.

21. Appellate Court Decision of 8-28-87 in case No. 86-1437:

No formal action was taken against plaintiff and his medical privileges remained intact. Plaintiff appealed the action of the executive committee through two administrative levels. His medical staff privileges at Heritage Hospital have never been limited, suspended or revoked since their initial grant in 1978. Eighteen months after the incident with the patient, plaintiff was appointed chief of the Department of Psychiatry at Heritage Hospital, thereby becoming a member of the executive committee.

The Amended Complaint reads as follows:

10. Further the plaintiff does allege that the following entry was made in the minutes of the Executive Committee of Heritage Hospital for August 24, 1981,

"UNFINISHED BUSINESS

W. Yee, M.D. - As a follow-up to the Executive Committee's review of case #11668563, Dr. Yee appeared before

the Executive Committee to provide an explanation of the incident involving that particular case. This action was done as noted in the 7/27/81 Executive Committee minutes. Dr. Yee's requested appearance was to hear his side of the case and as such was not a corrective action conference, but instead an opportunity to obtain additional information on the case. Dr. Yee acknowledged that he was emotionally very upset and instead of providing a verbal summary he distributed a written statement to the Committee members, which is on file in the Executive Committee book. He then noted that he did not concur that the patient was ordered transferred out the MHU without having been informed.

Dr. Yee asked for guidance from the Committee as to how he should conduct himself when a situation like this arises again. Dr. Yee was then excused from the meeting.

After reviewing the details of the case, the Mental Health admission policy, and Dr. Yee's disregard in accepting the direction from the Chief of Psychiatry, it was passed unanimously that Dr. Yee be forwarded a letter noting that he was in violation of the Rules and Regulations and admission policies of the MHU, which he should observe, and that in the future he should also follow the Rules & Regulations and admission policies of the MHU, and follow the guidance and direction

provided to him by the Chief of the Department; and that the Executive Committee fully supported Dr. Rhew as Chief of the Department and his handling of case #11668563."

11. Plaintiff alleges that the entry was sufficient to allow the Executive Committee of Heritage Hospital or the Hospital Administration to either dismiss Plaintiff Dr. Yee, or to refuse to renew Dr. Yee's Privileges at a later date according to the PCHA Medical Staff By-Laws. Article V, Section 5.12 (d) states that the Executive Committee shall recommend reappointment based upon, "his compliance with the hospital by-laws and the medical staff by-laws, rules and regulations, his cooperation with hospital personnel, his use of the hospital's facilities for his patients. his relations with other practitioners, and his general attitude toward patients, the hospital and the ..126 public." Further the medical Staff By-Laws state in Article VI Section 6.8 "Any physician or dentist may have his membership on the Staff revoked or his privileges revoked, reduced or suspended by following the procedures hereinafter set forth whenever the activities or professional conduct of the practitioner:

2. Are in violation of the Medical Staff By-Laws or the Rules and Regulations of the Staff;"

12. The entry cited in paragraph 10 above was made in violation of Medical Staff By-Laws. A finding of violation and a letter ordering supervision may only be authorized under Article VII, Section 7.3 of the Medical Staff By-Laws. However Section 7.3 may only be utilized following a Section 7.2 Investigative Conference. The Executive Committee Conspired to facilitate their conspiracy to remove Dr. Yee, the Plaintiff, from the staff by denying the notice and hearing defined in Section 7.2 of the Medical Staff By-Laws.

37. The effect of these acts was to restrict unlawfully the plaintiff's practice of medicine which is part of interstate commerce, includes Medicare and Medicaide patients and includes many handicapped patients with medical disabilities.

38. As a result of the accumulated effects of the acts of the defendants named in this complaint the plaintiff has suffered loss of referrals, damage to his professional reputation, emotional frustration and suffering intentionally inflicted by the plaintiffs, actual loss of income and impaired expectations of income.

22. Appellate Court Decision of 8-28-87 in case No. 86-1437:

He resigned that position in July 1984 and filed this action.

Review of the Docket in the District Court below will reveal reveal that the physican plaintiff filed the original complaint on May 17, 1984, several months before resigning as chariman of the department of psychiatry.

23. Appellate Court Decision of 8-28-87 in case No. 86-1437:

After conducting a hearing and reviewing extensive briefs and documentations, the district court entered an order dismissing all of the claims, either for failure to state a claime, for lack of standing or on the ground that pendant state claims should be dismissed upon finding of no cause of action with respect to the federal claims.

Review of the docket of the District Court below will reveal that although the plaintiff/physician submitted interrogatories to all of the named

defendants/appellees the majority of the defendants did not file either an answer or an objection within the 30 days required by Rule 33(a) of the Federal Rules of Civil Procedure. In particular review of the docket will reveal that on August 16, 1984 the magistrate entered an order that plaintiff was entitled to submit 20 interrogatories to each defendant for answer after action on the dispositive motion.

24. Appellate Court Decision of 8-28-87 in case No. 86-1437:

As pointed out, no formal action was ever taken against the plaintiff and his medical privileges remained intact. All that any defendant did was to cause a letter to be written to the plaintiff stating that he had disregarded directives of the hospital and requesting that he observe the rules and regulations in the future. Under this set of facts, the plaintiff stated no claim upon which relief could have been granted by the district court.

The Amended Complaintif reads as follows:

31. Although Mr. B. Ward Smith did successfully mislead Judge Olzark, there was quite a different result with the U. S. Department of Health and Human Services, Division of Civil Rights. On June 14, 1983 Mr. Wheeler signed a compliance agreement in Case Number 05-82-3118. The original complaint was for discrimination against the handicapped and wrongful retaliation against the plaintiff for offering oxygen as an accomodation for the handicapped. Mr. Wheeler on the behalf of the PCHA agreed to the following stipulations on the agreement:

1. The Recipient agrees not to deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit or service that is equal to and as effective as those provided to others.

2. The Recipient agrees not to deny to any complainant's patient admission to the psychiatric unit on the basis of her handicap (asthma & emphysema) and it agrees to provide her with the same services provided to other patients.

3. The Recipient agrees to amend its admission policy as found in the first paragraph of Heritage Hospital program and general policies psychiatric to read as follow:

Emotionally disturbed adults and selected adolescents who have passed their 15th birthday and in consultation with the Director of the Unit may be admitted to the Service. Patients suffering from all types of pssychiatric illnesses treatable in a psychiatric section of a general hospital may be admitted. In some cases, admission may be prohibited because of the degree of overt disturbance which would be caused by the patient. Psychiatric patients requiring other than simple medical surgical care will be transferred to the Medical/Surgical Unit until they can be properly handled by Psychiatric Unit Personnel, without special medical/surgical treatment modalities.

4. The Recipient agrees to admit and to provide oxygen care to the complainant's patient I.D. number 11668563. The Oxygen will be kept in the Nurse Station Area.

5. The Recipient agrees that there shall be no retaliation against the complainant for having admitted patient patient I.D. number 11668563.

6. The Recipient acknowledges there are no notes or references contained in its file referring to the complainant for admitting I.D. number 11668563 to the Psychiatric Unit.

This Compliance Agreement effectively destroyed the rule the plaintiff/phsycian allegedly violated.

Defendant/Wheeler did sign the agreement on the behalf of Heritage Hospital and defendant PCHA (Peoples Community Hospital Authority. The Compliance agreement is violated of the PCHA keeps a record that plaintiff/phsycian has violated any rule regulation or policy by offering oxygen to patient #11668563 in July of 1981.

Plaintiff/physician asserts that every fact recited by the appellate court in its decision of August 28, 1987 is at issue with substantial and credible allegations in the Amended Complaint. Plaintiff asserts that if the Appellate Court below did recast its opinion according to the facts of the Amended Complaint, the matter would have to be remanded for trial before the fact finder.

Appendix per Rule 21.1(k):

Order directing proper appendix	66
Letter demanding Joint Appendix by July 20, 1987	67
Order Denying list of errors and extension to file petition for rehearing	68
Order denying reassignment	69
Order denying injunction.....	70-71
Order dismissing case/opinion	72-74
Order affirming district court with opinion [order appealed from]	75-80
Order denying petition rehearing	81-82
Notice of Appeal	83-85

FEDERAL LAW

U. S. Constitutional Amendments:	
1	APPENDIX PAGE 86
5	APPENDIX PAGE 86-87
14	APPENDIX PAGE 87-88

Federal Statutes:

15 U.S.C. § 1	APPENDIX PAGE 88-90
15 U.S.C. § 2	APPENDIX PAGE 90
15 U.S.C. § 15	APPENDIX PAGE 91
18 U.S.C. § 371	APPENDIX PAGE 91-93
18 U.S.C. § 241	APPENDIX PAGE 93-94
18 U.S.C. § 242	APPENDIX PAGE 94-95
28 U.S.C. § 1254(1)	APPENDIX PAGE 95
28 U.S.C. § 1291	APPENDIX PAGE 96

28 U.S.C. § 1331	APPENDIX PAGE 96
28 U.S.C. § 1337	APPENDIX p. 96-97
28 U.S.C. § 1343	APPENDIX p. 97-99
28 U.S.C. § 1654	APPENDIX p. 99
28 U.S.C. § 2101(c)	APPENDIX p. 99-100
28 U.S.C. § 2103	APPENDIX p. 100-101
28 U.S.C. § 2111	APPENDIX p. 101
29 U.S.C. § 794	APPENDIX p. 101-102
29 U.S.C. § 794(a)	APPENDIX p. 103

Michigan Statutes

M.C.L. § 24.232	APPENDIX p. 104-106
M.C.L. § 24.233	APPENDIX p. 106-107
M.C.L. § 24.285	APPENDIX p. 107-108
M.C.L. § 24.306	APPENDIX p. 108-109
M.C.L. § 37.1101	APPENDIX p. 110
M.C.L. § 37.1102	APPENDIX p. 110
M.C.L. § 37.1103	APPENDIX p. 111-114
M.C.L. § 37.1301	APPENDIX p. 114-115
M.C.L. § 37.1302	APPENDIX p. 115-117
M.C.L. § 37.1601	APPENDIX p. 117
M.C.L. § 37.1602	APPENDIX p. 117-118
M.C.L. § 37.1606	APPENDIX p. 118-119
M.C.L. § 37.1607	APPENDIX p. 119
M.C.L. § 330.1136	APPENDIX p. 120
M.C.L. § 330.1142	APPENDIX p. 120-121
M.C.L. § 330.1150	APPENDIX p. 121
M.C.L. § 331.2	APPENDIX p. 121-123
M.C.L. § 331.5	APPENDIX p. 124
M.C.L. § 331.6	APPENDIX p. 125-128
M.C.L. § 331.8t	APPENDIX p. 128-129
M.C.L. § 333.20142	APPENDIX p. 129-130
M.C.L. § 333.20152	APPENDIX p. 130-131

Compliance Agreement *	132-140
Proof of Service *	141-142

NO. 86-1437
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
FILED JULY 9, 1987

JOHN P HEHMAN, Clerk

WILLIAM R. YEE,
Plaintiff-Appellant

vs.

ORDER

B. WARD SMITH, ET AL.,
Defendant-Appellees

BEFORE: LIVELY, Chief Judge; KEITH, Circuit Judge; and DOWD, District Judge.*

Upon consideration, the appellant's motion to file a supplemental brief is hereby denied. The appellant is directed to file a proper appendix in compliance with Sixth Circuit Rule 11(c) and Federal Rules of Appellate Procedure 30 (b).

The appellee's motion for attorney fees is denied at this time.

ENTERED BY ORDER OF THE COURT
(signed John P. Hehman) Clerk

*The Honorable David Dowd, United States District Court for the Northern District of Ohio, sitting by designation.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
US POST OFFICE AND COURTHOUSE BUILDING
CINCINNATI, OHIO 45202-3988
(513) 684-2953
(FTS) 684-2953

July 13, 1987

Mr. William R. Yee
P.O. Box 310
Owosso, Michigan 48867

RE: Case NO. 86-1437
Yee vs. Smith et al

Dear Mr. Yee:

Please be advised that five (05)
copies of the supplement to the Joint
Appendix must be received in Clerk's
office by July 20, 1987.

-Very truly yours,
John P. Hehman, Clerk
(signed)
(Ms.) Ernestine R. Tennyson
Case Supervisor

cc:
Mr. John R. Day
Ms. Lynn L Lower
Mr. Robert G. Kamenec
21

NO. 86-1437
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
FILED SEPT 29 1987

JOHN P HEHMAN, Clerk
WILLIAM R. YEE, Plaintiff-Appellant
vs.

ORDER

B. WARD SMITH, ET AL.,
Defendant-Appellees

Upon the consideration of the motion of the appellant for a listing of all substantial errors of the joint appendix as well as a request for a (14) day extension to file a petition for rehearing after the receipt of the aforementioned errors.

It is ORDERED that the motion be, and it is hereby, denied.

ENTERED BY ORDER OF THE COURT
John B. Hehman, Clerk
(signed John P. Hehman)

United States District Court
Eastern District of Michigan

Filed 4-4-1986 Case No. 84-CV-2386-DT

William R. Yee, Plaintiff,

vs.

B. Ward Smith, et al., Defendants

ORDER DENYING MOTION TO REASSIGN
CASE AT A SESSION of said Court, held
in the United States District
Courthouse, in the City of Detroit,
State of Michigan, on the 31st day of
March, 1986.

PRESENT: THE HONORABLE GEORGE La PLATA
United States District Judge

On March 27, 1986, the Court heard
oral argument on Plaintiff's Motion to
Reassign case to another judge since in
the future Judge La Plata would be in
the Ann Arbor District Court. This
Court does not find good cause for the
requested relief and DENIES the Motion.

(signed) GEORGE La PLATA

United States District Court
Eastern District of Michigan
Filed 4-4-86 Case No. 84-CV-2386-DT

William R. Yee, Plaintiff,

vs.

B. Ward Smith, et al., Defendants

ORDER DENYING MOTION FOR PRELIMINARY
INJUNCTION

AT A SESSION of said Court, held in the
United States District Courthouse, in
the City of Detroit, State of Michigan,
on the 31st day of March, 1986.

PRESENT: THE HONORABLE GEORGE La PLATA
United States District Judge

This matter was before the Court,
on Plaintiff's Motion for a Preliminary
Injunction. As a result of the
Defendant's refusal to grant an
extension of a leave of absence,
Plaintiff seeks an opportunity to
appeal the decision and to be
reinstated with staff privileges.

The Court, in accordance with the ruling from the Bench, concludes that Plaintiff has failed to show he is likely to succeed on the merits, Defendants will not be prjudiced and most importantly, he has not suffered irreparable harm. Consequently, this Court DENIES Plaintiff's Motion for Prliminary Injunction.

(signed) George La Plata

United States District Court
Eastern District of Michigan
Southern Division
Filed April 4, 1986
Case No. 84-CV-2386-DT
Hon. George La Plata

William R. Yee,
Plaintiff,
vs.

B. Ward Smith, et al.,
Defendants

ORDER OF DISMISSAL

AT A SESSION of said Court, held in the
United States District Courthouse, in
the City of Detroit, State of Michigan,
on the 31st day of March, 1986.

PRESENT: THE HONORABLE GEORGE La PLATA
United States District Judge

On March 27, 1986, the Court
entertained oral arguments on
Defendants, B. Ward Smith, Cozadd,
Shangle, Smith and Andrews' Motion for
Summary Judgment and the other
Defendants Motion to Dismiss. After
Review of the extensive briefs filed in

this matter and in accordance with the Court's ruling from the Bench, the Court grants the Defendants Motion to Dismiss the following claims: (1) violation of the Sherman Antitrust Act, 15 U.S.C. §§1, 2, (2) 42 U.S.C. §1983, AND (3) 42 U.S.C. § 1985, for failure to state a claim.

As to the claim that the Defendants violated the Rehabilitation Act of 1973, 29 U.S.C. §794, 42.7 Fed. Reg. 22678 and 22679 §84.4 (1977), it is evident that the Plaintiff lacks standing. Singleton v. Wulff, 428 U.S. 106, 112-118, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976). Plaintiff also has failed to demonstrate he has suffered any injury. Plaintiff's staff privileges were never revoked or suspended. Therefore, the Court dismisses the claim of a violation of the

Rehabilitation Act of 1973.

In view of the foregoing rulings, the Court, in its discretion, dismisses without prejudice the remaining pendent State law claims consisting of: intentional infliction of emotional distress, defamation, interference with contractual relations and violation of the Michigan Handicappers' Civil Rights Act, M.C.L.A. 37.1100 et seq. None of these cause of actions raise a Federal claim. United Mine Workers v. Gibbs., 383 U.S. 715 (1966).

(signed) George La Plata
U.S. District Judge

NOT RECOMMENDED FOR FULL TEXT
PUBLICATION....[illegible]

FILED

AUG 28 1987

JOHN P. HEHMAN, Clerk

No. 86-1437

United States Court of Appeals
for the Sixth Circuit

WILLIAM R. YEE,

Plaintiff-Appellant,

v.

B. Ward Smith, et al.

Defendants-Appellees.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

Decided and Filed

BEFORE: LIVELY, Chief Judge; KEITH,
Circuit Judge; and DOWD, District
Judge.*

PER CURIAM. The plaintiff appeals from an order of the district court granting the defendants' motion to dismiss for failure to state a claim upon which relief may be granted. Petitioner is a licensed psychiatrist in Michigan who was a member of the medical staff of Heritage Hospital,

which is operated by People's Community Hospital Authority. In July 1981 his patient was admitted to the mental health unit of Heritage Hospital and plaintiff ordered the staff to provide oxygen to her bedside for usage she, the patient, requested. This order violated an admission policy of the mental health unit of Heritage Hospital which did not allow oxygen tanks, hoses and gauges to be left unsupervised in the psychiatric unit for safety reasons. The nursing staff challenged plaintiff's order, but plaintiff refused to compromise and was subsequently issued a letter from the hospital's executive committee, stating that he had disregarded department directives and requesting that he observe rules and regulations of the mental health unit in the future. No

formal action was taken against plaintiff and his medical privileges remained intact. Plaintiff appealed the action of the executive committee through two administrative levels. His medical staff privileges at Heritage Hospital have never been limited, suspended or revoked since their initial grant in 1978. Eighteen

*The honorable David Dowd, Judge, United States District Court for the Northern District of Ohio, sitting by designation.

[page 1]

months after the incident with the patient, plaintiff was appointed chief of the Department of Psychiatry at Heritage Hospital, thereby becoming a member of the executive committee. He resigned that position in July 1984 and filed this action.

In this civil action plaintiff

sought relief pursuant to federal antitrust statutes, 42 U.S.C. § 1983 (citing first, fifth and fourteenth amendment violations), libel and slander and violation of the Rehabilitation Act of 1973. Some defendants filed motions for summary judgment and others filed motions to dismiss for failure to state a claim. After conducting hearing and reviewing extensive briefs and documentations, the district court entered an order dismissing all of the claims, either for failure to state a claim, for lack of standing or on the ground that pendant state claims should be dismissed upon a finding of no cause of action with respect to the federal claims.

After examination of the briefs and record this panel is of the

unanimous opinion that oral argument is not needed in this case. Rule 34(a), Federal Rules of Appellate Procedure; Rule 9(b)(3), Rules of the Sixth Circuit. Upon consideration of the briefs of the parties together with the record on appeal this court concludes that the district court did not err in dismissing this action. As pointed out, no formal action was ever taken against the plaintiff and his medical privileges remained intact. All that any defendant did was to cause a letter to be written to the plaintiff stating that he had disregarded directives of the hospital and requesting that he observe the rules and regulations in the future. Under this set of facts, the plaintiff stated no claim upon which relief could have been granted by the district court. The provisions of

Rule 12(b)(6), Federal Rules of Civil Procedure, relating to the consideration of matters outside the pleading were observed and dismissal was the proper response.

Although the plaintiff proceeded pro se in this action, he represents that he has been admitted to practice law in Michigan. As an attorney, he had an obligation to this court to abide by its rules and requirements with respect to an appendix, which [page 2] he has not done. In any future appearance before this court, the court will consider sanctions if the plaintiff violates any of its rules of practice.

The judgment of the district court is affirmed.

(Signed) 8-28-87.....

[page 3]

No. 86-1437

United States Court of Appeals
for the Sixth Circuit

Order Filed Oct. 15, 1987,
John P. Hehman, Clerk

William R. Yee,
Plaintiff-Appellant,
v.
B. Ward Smith, ET AL.,
Defendant-Appellees

Before: LIVELY, Chief Judge, Keith,
Circuit Judge, and Dowd* United States
District Judge

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and

concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

Entered by order of the court
(signed)
John P. Hehman, Clerk

*Hon. David D. Dowd, Jr. sitting by designation from the Northern District of Ohio.

United States Court of Appeals,
6th Circuit
FILED 11-17-87 re: No. 86-1437

William R. Yee, Plaintiff/Appellant
v.
B. Ward Smith et al, Defendant/Appellees

Notice of Appeal to the United States Supreme Court; October Term 1987 Case No. _____; appealing the order of August 28, 1987 entered into the record August 28, 1987 in the United States Court of Appeals which did affirm the District Court orders below denying reassignment, denying injunctive relief and dismissing the case.

MEMORANDUM

Plaintiff pro per, William R. Yee does hereby file this Notice of Appeal per Rule 10 of the United States Supreme Court. with the chain and nexus of jurisdiction established by the following statutes:

28 U.S.C. § 2101(c)	time
28 U.S.C. § 1654	appearance
28 U.S.C. § 1254(1)	Jurisdiction
28 U.S.C. § 1291	Jurisdiction
28 U.S.C. § 1331	Federal Quest.
28 U.S.C. § 1337	Antitrust
28 U.S.C. § 1343	Civil Rights

This notice of appeal by Writ of Certiorari is filed by William R. Yee, pro per, plaintiff/appellant.

Plaintiff/appellant William R. Yee does assert that the parties have been notified this day per the proof of service attached as pages 3 and 4.

Plaintiff/appellant is appealing the order of August 28, 1987 entered into the record August 28, 1987 in the United States Court of Appeals which did affirm the District Court orders below denying reassignment, denying injunctive relief and dismissing the case, R-156; R-157; R-157 and R-158.

Petition for rehearing denied and filed Oct. 15, 1987. The parties are:

William R. Yee, Plaintiff/Appellant

v.

B. Ward Smith,	John J. Freysinger,
V. Khanna,	H. R. Holloway,
M. Coto	M. Patel
R. A. Wyatt	D. Sukurmarin
J. Padgett	S. Rhew

Mary Pollando	F. Taylor
H. Schunk	D. Mahajan
F. McCue	R. Malone
Jose O. Kleer	G. Stair
B. Sinha	J. A. Foote
K. Sawney	H. Quiroz
S. Kobolijak	C.J. Everingham
A. Bady	Maria McPhail
Walter S. Wheeler	
Cozadd, Shangle, Smith & Andrews	
Peoples Community Hospital Authority	
Associated Physicians,	
	Defendant/Appellees.

FEDERAL LAW

United States Constitution

Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject

for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the

er al power io of 'he 'aw .

Section 5. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

15 U.S.C. § 1

§ 1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: Provided, That nothing contained in sections 1 to 7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand,

or name of the producer or distributor of such commodity and which is free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: Provided further, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of

minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1 to 7 of this title to be illegal shall be guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or both said punishments, in the discretion of the court.

July 2, 1980, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 1937, c. 690, Title VIII, 50 Stat. 693; July 7, 1955, c. 281, 69 Stat. 282.

15 U.S.C. § 2

§2. Monopolizing trade a
misdemeanor; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

15 U.S.C. § 15. Suits by persons injured; amount of recovery

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust

laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. Oct. 15, 1914, c. 323, § 38 Stat. 731.

18 U.S.C. § 371

§ 371. Conspiracy to commit offense or to defraud United States

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor. June 25, 1948, c. 645, 62 Stat. 701.

18 U.S.C. § 241

If two or more persons conspire to unjure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so

secured-

They shall be fined not more than \$10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

June 25, 1948, c. 645, 62 Stat. 696;
Apr. 11, 1968, Pub.L. 90-284, Title I,
§ 103(a), 82 Stat. 75.

18 U.S.C. § 242

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are

prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if death results shall be subject to imprisonment for any term of years or for life.

June 25, 1948, c. 645, 62 Stat. 696;
Apr. 11, 1968, Pub.L. 90-284, Title I,
§ 103(b), 82 Stat. 75.

28 U.S.C. § 1254(1)
§ 1254. Courts of appeals; certiorari;
appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;....

28 U.S.C. § 1291

§ 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court....

28 U.S.C. § 1331

§ 1331 Federal Question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1337

§ 1337 Commerce and antitrust regulations; amount in controversy, costs

(a) The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies: Providing however, That the district courts shall have original jurisdiction of an action brought under section 11707 of title 49, only if the matter in controversy for each receipt or bill of lading exceeds \$10,000, exclusive of interest or costs.

28 U.S.C. § 1343

§ 1343 Civil rights and elective franchise

(a) the district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of

deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

(4) To recover damages or to secure

equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote....

28 U.S.C. § 1654

§ 1654. Appearance personally or by counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

28 U.S.C. § 2101(c)

§ 2101. Supreme Court; time for appeal or certiorari; docketing; stay

(c) Any other appeal or writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgement or decree.

A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

28 U.S.C. § 2103. Appeal from State court or from a United States court of appeals improvidently taken regarded as petition for writ of certiorari

If an appeal to the Supreme Court is improvidently taken from the decision of the highest court of a State, or of a United States court of appeals, in a case where the proper mode of review is by petition for certiorari, this alone shall not be ground for dismissal; but the papers whereon the appeal was taken shall be regarded and acted on as a petition for writ of certiorari and as if duly presented to the Supreme Court at the time the appeal was taken. Where in such case there appears to be no

reasonable ground for granting a petition for writ of certiorari it shall be competent for the Supreme Court to adjudge to the respondent reasonable damages for his delay, and single or double costs.

28 U.S.C. 2111. Harmless error

On the hearing of any appeal or writ of certiorari in any case, the court shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties.

29 U.S.C. § 794. Nondiscrimination under Federal grants and programs; promulgation of rules and regulations.

No otherwise qualified handicapped individual in the United States, as defined in section 7(7) [29 USCS § 706(7)], shall, solely by reason of his handicap, be excluded from the

participation in, denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

29 U.S.C. 794a.

Remedies and attorney's fees

(a)(2) The remedies, procedures and rights set forth in title VI of the Civil Rights Act of 1964 [42 USCS §§ 2000d et seq.] shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance or Federal provider of such assistance under section 504 of this Act [29 USCS § 794].

(b) In any action or proceeding to enforce or charge a violation of a provision of this title [29 USCS §§ 790 et seq.], the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

MICHIGAN COMPILED LAWS

Administrative Procedures Act

M.C.L. § 24.232

24.232 Statutory definitions and rules of construction, applicability, discrimination, violations; adoptions by reference

Sec. 32. (1) Definitions of words and phrases and rules of construction prescribed in any statute, and which are made applicable to all statutes of this state, also apply to rules unless clearly indicated to the contrary.

(2) A rule or exception to a rule shall not discriminate in favor or against any person, and a person affected by a rule is entitled to the same benefits as any other person under the same or similar circumstances.

(3) The violation of a rule is a crime when so provided by statute. A rule shall not make an act or omission

to act a crime or prescribe a criminal penalty for violation of a rule.

(4) An agency may adopt, by reference in its rules and without publishing the adopted matter in full, all or any part of a code, standard or regulation which has been adopted by an agency of the United States or by a nationally recognized organization or association. The reference shall not cover any later amendments and editions of the adopted matter, but if the agency wishes to incorporate them in its rule it shall amend the rule or promulgate a new rule therefor. The agency shall have available copies of the adopted matter for inspection and distribution to the public at cost and the rules shall state where copies of the adopted matter are available from the agency and the agency of the United

States or the national organization or association and the cost thereof as of the time the rule is adopted.

M.C.L. § 24.233

24.233 Description of agency organization, operations and procedures; forms with instructions

Sec. 33. (1) An agency shall promulgate rules describing its organization and stating the general course and method of its operations and may include therein forms with instructions. Sections 41 and 42¹ do not apply to such rules.

(2) An agency shall promulgate rules prescribing its procedures available to the public and the methods by which the public may obtain information and submit requests.

(3) An agency may promulgate rules, not inconsistent with this act or other applicable statutes,

prescribing procedures for contested cases.

M.C.L. 24.285 Final decisions and orders.

Sec. 85. A final decision or order of an agency in a contested case shall be made within a reasonable period, in writing or stated in the record and shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact which would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each

conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material and substantial evidence. A copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

M.C.L. 24.306

Sec. 106. (1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the

following:

(a) In violation of the constitution or a statute.

(b) In excess of the statutory authority or jurisdiction of the agency.

(c) Made upon unlawful procedure resulting in material prejudice to a party.

(d) Not supported by competent, material and substantial evidence on the whole record.

(e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

(f) Affected by other substantial and material error of law.

(2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings.

M.C.L. § 37.1101

37.1101 Short Title

Sec. 101. This act shall be known and may be cited as the "Michigan handicappers' civil rights act".

M.C.L. 37.1102 Opportunity without discrimination as civil rights; accomodation of handicapper

Sec. 102 (1) The opportunity to obtain eemployment, housing, and other real estate and full and equal utilizatiion of public accomodations, public servives, and educational facilities without discrimination because is guaranteed by this act and is a civil right.

(2) A person shall accomodate a handicapper for purposes of employment, public accomodation, public service, education, or housing unless the person demonstrates that the accomodation wuld impose an undue hardship.

M.C.L. 37.1103. Definitions

(a) "Commission" means the civil rights commission established by section 29 of article 5 of the state constitution of 1963.

(b) "Handicap" means a determinable physical or mental characteristic of an individual or a history of the characteristic which may result from disease, injury, congenital condition of birth, or functional disorder which characteristic:

(i) For purposes of article 2,¹ is unrelated to the individual's ability to perform the duties of a particular job or position, or is unrelated to the individual's qualifications for employment or promotion.

(ii) For purposes of article 3,² is unrelated to the individual's

ability to utilize and benefit from a place of public accomodation or public service.

(iii) For purposes of article 4,³ is unrelated to the individual's ability to utilize and benefit from educational opportunities, programs, and facilities at an educational instutution.

(iv) For purposes of article 5,⁴ is unrelated to the individual's ability to acquire, rent, or maintain property.

(c) "Handicapper" means an individual who has a handicap.

(d) "Mental characteristic" is limited to mental retardation which is significantly subaverage general intellectual functioning and to a mentally ill restored condition, and for purposes of article 5 only to a

determinable mental condition of an individual or a history of such condition which may result from disease, accident, condition of birth, or functional disorder which constitutes a mental limitation which is unrelated to an individual's ability to acquire, rent, or maintain property.

(e) "Person" includes an individual, agent, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee in bankruptcy, unincorporated organization, this state, or any other legal, commercial or governmental entity or agency.

(f) "Political subdivision" means a county, city, village, township, school district, or special district or

authority of this state.

- 1 Sections 37.1201 to 37.1208
- 2 Sections 37.1301 to 37.1303
- 3 Sections 37.1401 to 37.1403
- 4 Sections 37.1501 to 37.1407

37.1301 Definitions.

Sec. 301 As used in this article:

(a) "Place of public accomodation" means a business, educational institution, refreshment, entertainment, recreation, health, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or accomodations are extended, offered, sold, or otherwise made available to the public.

(b) "Public service" means a public facility, departmet, agency, board, or commission, owned, operated, or managed by or on behalf of this state or a subdivision of this state, a county, city, village, township, or

independent or regional district in this state, or a tax exempt agency established to provide service to the public.

37.1302. Prohibitions; denial of full and equal enjoyment, statements, advertisements or signs

Sec. 302 Except where permitted by law, a person shall not:

(a) Deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accomodations of a place of public accomodation or public service because of a handicap that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids.

(b) Print, circulate, post, mail,

or otherwise cause to be published a statement, advertisement, or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation or public service will be refused, withheld from, or denied an individual because of a handicap that is unrelated to the individual's ability to utilize and benefit from the goods, services, facilities, privileges, advantages, or accommodations or because of the use by an individual of adaptive devices or aids , or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because of handicap that is unrelated to the individual's ability to utilize

and benefit from the goods, services, facilities, privileges, advantages, or accomodations or because of the use by an individual of adaptive devices or aids.

37.1601. Civil rights commission; rules

Sec. 601. This act shall be administered by the civil rights commission. The commission may promulgate rules to carry out this act pursuant to Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws.

37.1602. Prohibitions

Sec. 602. A person or two or more persons shall not:

(a) Retaliate or discriminate against a person because the person has opposed a violation of this act, or

because the person has made a charge, filed a complaint, testified, assisted or participated in an investigation, proceeding, or hearing under this act.

(b) Aid, abet, incite, compel, or coerce a person to engage in a violation of this act.

(c) Attempt directly or indirectly to commit an act prohibited by this act.

(d) Wilfully interfere with the performance of a duty or the exercise of a power by the commission or any of its authorized representatives.

(e) Wilfully obstruct or prevent a person from complying with this act or an order issued.

37.1606. Civil actions for injunctive relief or damages

Sec. 606. (1) A person alleging a violation of this act may bring a civil

action for appropriate injunctive relief or damages, or both.

(2) an action commenced pursuant to subsection (1) may be brought in the circuit court for the county where the alleged violation occurred, or the county where the person against whom the civil complaint is filed resides or has his or her principle place of business.

(3) As used in subsection (1), "damages" means damages for injury or loss caused by each violation of this act, including reasonable attorney's fees.

37.1607. Equitable rights

Sec. 607. This act shall not diminish the right of a person to seek direct and immediate legal or equitable remedies in the courts of this state.

M.C.L. § 330.1136 Administration of
§§ 330.134 to 330.150; rules.

Sec. 136. The director shall administer sections 134 through 150 and promulgate rules to implement the purposes of sections 134 through 150 and for the maintenance and operation of mental hospitals as necessary to enable state or private hospitals, or both, to qualify for federal funds available for patient care or for construction or remodeling of facilities. The rules shall be promulgated pursuant to Act No. 306 of the Public Acts of 1969, as amended.

MCL 330.1142 Discrimination

Sec. 142. A facility licensed under sections 134 through 150 shall have a governing body which shall certify to the department of mental health that the facility does not

discriminate against persons on the basis of race, creed, color, sex, or natural origin, and the governing body shall direct the administration of the facility to take such action as is necessary to assure that the facility adheres to nondiscriminatory practices.

MCL 330.1150

SEC. 150. A person who violated sections 134 through 150 or a rule authorized by sections 13 through 150 is guilty of a misdemeanor.

M.C.L. § 331.2 Body corporate; powers and authority; recognition as authority; validation of actions and proceedings

Sec. (1) The hospital authority shall be a body corporate with power to sue or be sued in any court of this state and may exercise those powers necessary and incident to the acquisition, construction, improvement,

enlargement, extension, ownership, maintainance, and operation of 1 or more community hospitals. The authority may contract with any of the participating cities, villages, and townships, or any other city, village, or township, or with any county department of social welfare, for the hospital care of indigent patients and other persons entitled to hospital care at public expense. The authority may contract with any individual, firm, or corporation for the furnishing of hospital care to persons at the private expense of the individual, firm, or corporation. The authority may establish rules providing for a system of civil service for its employees.

(2) an entity which is unable to document compliance with section 1 and 3¹, which is acting or purporting to

act as a hospital authority under this act, and which continuously owned and operated a hospital for not less than 15 years before the effective date of this subsection, shall be a hospital authority duly organized and existing under this act, fully empowered to exercise any power granted to a hospital authority under this act. The entity shall file a written notice with the clerk of each city, village, or township included in the hospital authority within 30 days after the effective date of this subsection stating that the entity, being unable to document compliance with sections 1 and 3, is recognized as a hospital authority pursuant to this subsection.....

331.5. Hospital Board; committees

Sec. 5. (1) The hospital authority shall be directed and governed by a hospital board consisting of.....

...

(6) The hospital board shall also appoint an executive committee, consisting of...The hospital board shall also appoint a medical advisory committee which shall... advise the hospital board with regard to professional problems of hospital operation....and to surgical and medical policies including matters pertaining to the development of medical staff by-laws and rules. The members of the medical advisory committee shall be physicians and surgeons licensed pursuant to article 15 of the public health code, Act No. 368 of the Public Acts of 1978, being

sections 333.16101 to 333.18838 of the Michigan Compiled Laws. The board shall also select and employ....other officers and employees and contract forservices as are considered necessary to effectuate its purposes.

M.C.L. § 331.6

331.6 Hospital board meetings; accounts, audits; treasurer's bond; operation of hospital; staff qualifications; professional work

Sec.6. After organization, the hospital board, by resolution, shall establish the times for holding regular meetings for the board. Business which the hospital board may perform shall be conducted at a public meeting held in compliance with ~~Act No.~~ 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. The board shall hold

other meetings at the call of the chairperson. Public notice of the time, date, and place of meetings shall be given in the manner required by Act No. 267 of the Public Acts of 1976 and the chairperson shall give 3 days' personal or written notice of the time and place of the meetings to the members. A member of the board may file a written waiver of notice and consent to a board meeting. The chairperson shall call a meeting upon written request of 3 members of the board. A majority of the members shall constitute a quorum. The board shall cause to be kept a written or printed record of each meeting, which record and any other writing prepared, owned, used, in the possession of, or retained by the board in the performance of an official function shall be made available to the

public in compliance with Act No. 442 of the Public Acts of 1976, being sections 15.231 to 15.246 of the Michigan Compiled Laws. The board shall provide for a system of accounts to conform to a uniform system required by law and for annual auditing of the accounts of the treasurer by a certified public accountant. The board shall require the treasurer to give a suitable bond by a responsible bonding company, to be paid for by the board. The board shall adopt by-laws, rules, and policies governing the operation and professional qualifications of its medical staff. Physicians, nurses, attendants, employees, patients, and persons approaching or on the premises shall be subject to the by-laws, rules, and policies as the hospital board may adopt or authorize to be adopted. The

board may deny or revoke staff membership, or suspend or reduce hospital privileges to a physician who violates a provision of the medical staff by-laws, rules, and policies. The medical advisory committee, with the approval of the hospital board, shall adopt rules and policies governing the professional work of the hospitals and the eligibility and qualifications of their medical staffs. The rules and policies shall conform, as nearly as practicable to the applicable standards recommended by the joint commission on accreditation of hospitals.

M.C.L. § 331.8t

331.8t Certificates of need

Sec. 8t. A hospital authority heretofore organized and operating pursuant to this act shall, prior to expending any authority funds for the

expansion of facilities or bonding for the construction of new facilities shall obtain a certificate of need from the state of Michigan department of health as per Act No. 256 of the Public Acts of 1972, being section 331.454.

M.C.L. § 333.20142

333.20142 Health facility agency; application for licensure or certification; certification of accuracy of information; disclosures, ownership interest, suppliers of goods and services; punishment for false statements.

Sec. 20142. (1) A health facility or agency shall apply for licensure or certification on a form authorized and provided by the department. The application shall include attachments, additional data, and information required by the

department.

(2) An applicant shall certify the accuracy of information supplied in the application and supplemental statements.

(5) An applicant or licensee who makes a false statement in an application or statement required by the department pursuant to this article is guilty of a felony' punishable by imprisonment for not more than 4 years, or a fine of not more than \$30,000.00 or both.

M.C.L. 333.20152

333.20152 Annual application for licensing or certification: certification of operation.

sec. 20152.

(1) A licensee shall certify annually to the department as part of its application for licensing and certification that:

(a) All phases of its operation,

including its training programs, comply with state and federal laws prohibiting discrimination. The applicant shall direct the administrator of the health facility or agency to take the necessary action to assure that the facility or agency is, in fact, so operated.

In the Matter of:
OFFICE FOR CIVIL RIGHTS
 and
HERITAGE HOSPITAL
 Case No. 05-82-3118

COMPLIANCE AGREEMENT

WHEREAS, the U.S. Department of Health and Human Services, Office for Civil Rights, hereinafter referred to as "OCR" is charged with the enforcement of Section 504 of the Rehabilitation Act of 1973, hereinafter referred to as "the Act", and

WHEREAS, Heritage Hospital is a Recipient of Federal financial assistance, hereinafter referred to as the "Recipient", and

WHEREAS, OCR received a complaint by William R. Yee, hereinafter referred to as the "Complainant", and

WHEREAS, the parties wish to resolve this matter without issuance of a formal letter of findings, now

therefore the parties agree to the terms embodied in this Compliance Agreement, hereinafter referred to as "this Agreement".

SECTION 1 - GENERAL

On September 7, 1982 OCR received a complaint of discrimination against the Recipient, Complainant alleges that the Recipient discriminated against his patient on the basis of handicap by denying her admission to the psychiatric unit in violation of Section 504 of the Rehabilitation Act of 1973.

The Recipient does agree that it is a Recipient of Federal financial assistance.

The Recipient does not admit that it has violated the Act or 45 CFR Part 84, and it is understood that this Agreement in no way constitutes any

admission by the Recipient of any violation of Section 504 of the Rehabilitation Act of 1973.

VOLUNATRY ACTION

1. The Recipient agrees not to deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benifit or service provided by the psychiatric unit but to provide the aid, benefit or service that is equal to and as effective as those provided to others.

2. The Recipient agrees not to deny complainant's patient admission to the psychiatric unit on the basis of her handicap (asthma & emphysema) and it agrees to provide her with the same services provided to other patients.

3. The Recipient agrees to amend its admission policy as found in the first paragraph of Heritage Hospital program

and general policies psychiatric to read as follows:

[Page 1]

Emotionally disturbed adults and selected adolescents who have passed their 15th birthday and in consultation with Director of the Unit may be admitted to the Service. Patients suffering from all types of psychiatric illnesses treatable in a psychiatric section of a general hospital may be admitted. In some cases, admission may be prohibited because of the degree of overt disturbance which would be caused by the patient. Psychiatric patients requiring other than simple medical and surgical care will be transferred to the Medical/Surgical Unit until they can be properly handled by Psychiatric Unit personnel, without special medical/surgical treatment modalities and care.

4. The Recipient agrees to admit and to provide oxygen care to the complainant's patient I.D. number 11668563. The oxygen will be kept in the Nurse Station area.

5. The Recipient agrees that there shall be no retaliation against the complainant as a result of the

complainant having admitted patient I.
D. number 11668563.

6. The Recipient acknowledges there are no notes or references contained in its file referring to the complainant for admitting I.D. number 11668563 to the Pssychiatric Unit.

SECTION II-REPORTING

The Recipient will submit to the Director of the Office for Civil rights, 300 Ssouth Wacker Drive, Chicago, Illinois 60606, within 30 days of the effective date of this Agreement documentation verifying admission of complainant's patient as described above, along with documentation verifying the date of admission or a proposed date which is mutually satisfactory to both parties. This will also include a copy of relevant policy

SECTION III-STANDARD PROVISIONS

1. The Recipient shall not intimidate, threaten, coerce, or discriminate against any individual because she/he has made a complaint, testified, assisted, or participated in any manner in the investigation of the matter which is addressed in this Agreement.

2. OCR, on its own motion, may at any time review compliance with this Agreement. As part of such review, the Recipient shall provide to OCR requested written reports concerning compliance and permit OCR to inspect the premises, examine witnesses, and examine and copy documents.

3. In the event OCR believes that any item of this Agreement has not been complied with, OCR will notify the Recipient in writing. The notice shall state the facts and circumstances

relied upon in forming that belief. In addition, the notice will provide the Recipient with 15 days to respond, indicating reasons for or rebuttal of any noncompliance. OCR will evaluate any such response.

If OCR then finds that any item of this Agreement has not been complied with, and that, as a result, there appears to be a failure to comply with the Act or its implementing regulations, 45 CFR Part 84, OCR may request the initiation of administrative or judicial enforcement proceedings consistent with 45 CFR 80.8 which is made applicable to Section 504 by 45 CFR 84.61.

4. In the event OCR finds that any item of this Agreement has not been complied with, OCR may choose to issue a letter of findings. If so, in any

administrative or judicial enforcement proceedings subsequently initiated, OCR may introduce evidence regarding the entire scope of the Recipient's alleged noncompliance, in addition to evidence regarding the Recipient's alleged violation of the Compliance Agreement.

[Page 2]

5. OCR shall place no restriction on the publication of the terms of this Agreement. In addition, OCR will release this Agreement and all related materials to any person upon request consistent with the terms of the Freedom of Information Act, 5 U.S.C. 552, and its implementing regulation, 45 CFR Part 5.

6. This Agreement will become effective as of the date the last party hereto signs the Agreement.

7. The Recipient will remain subject to and will comply with any and all

provisions of the Act or its implementing regulation, 45 CFR, Part 84, whether or not specifically addressed herein.

8. This Agreement does not apply to any other issues, complaints or reviews regarding compliance with the Act or any other statute.

9. This Compliance Agreement is executed by the parties hereto through their duly authorized representatives.

Approved and agreed to on behalf of
Heritage Hospital

BY: (signed) Walter S. Wheeler,
Administrator
Date: 6-14-83

Approved and agreed to on behalf of the
Department of Health and Human
Services, Office for Civil Rights,
Region V

By (signed)
Lucille Ish, Regional Manager
Region V Date: 5-24-83

[Page 3]

Case No. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

William R. Yee, Appellant
v.
B. Ward Smith, et al, Appellees;

ON APPEAL FROM:

THE UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

William R. Yee,
plaintiff appellant pro per
P. O. Box 310, Owosso, Michigan 48867
(517) 723-1403;

John R. Day (P31730)
Attorney for Defendant Appellees
1427 Park Lane Towers East
Dearborn, Michigan 48126-2484
(313) 336-8000;

Mr. Kamenec
Attorney for Cozadd et al
Defendant Appellees
900 Marquette Building
Detroit, Michigan 48226
(313) 965-3900

CERTIFICATE AND PROOF OF SERVICE AND
AFFIDAVIT

William R. Yee does hereby affirm that
on this day he did serve:

FORTY Copies of the: PETITION FOR WRIT
OF CERTIORARI PER RULE 21 ON:

CLERK OF THE COURT
SUPREME COURT OF THE UNITED STATES
1 FIRST STREET, N. E.
WASHINGTON, D.C. 20543
(202) 479-3011

AND THREE Copies on each of the
following:

MR. Kamenec
900 Marquette Building
Detroit, Michigan 48226;

Mr. Day
1427 Parklane Towers East
Dearborn, Michigan 48126-2484

by placing the same in envelopes,
properly addressed as above, and
placing the envelopes in the United
States Mail with the postage fully
prepaid.

I declare, certify, verify and state
under penalty of perjury that the
forgoing 142 pages are true and
correct.

Further, per 28 U.S.C. § 1746:

I declare, certify, verify and state
under penalty of perjury that the
forgoing is true and correct.

Executed on Friday, January 22, 1988

William R. Yee
William R. Yee M.D., J.D.
P. O. Box 310
Owosso, Michigan 48867
(517) 723-1403

Louis E. Good
LOUIS E. GOOD, NOTARY PUBLIC
SHIAWASSEE CO., STATE OF MICHIGAN
MY COMMISSION EXPIRES ON 11-04-90

PAGE 142